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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

7 || SEAN O'TOOLE, et al.,

8 | Plaintiffs,

No. C 11-1502 PJH

9 || v.

## ORDER STRIKING AMENDED COMPLAINT

CITY OF ANTIOCH, et al.,

## Defendants.

14 On June 21, 2011, plaintiffs filed an amended complaint without the opposing  
15 parties' written consent or leave of court pursuant to FRCP 15(a)(2). Because defendants  
16 filed a motion to dismiss claims alleged in the complaint pursuant to FRCP 12(b)(6) on April  
17 19, 2011, plaintiffs' time to amend as of right within 21 days after service of that motion has  
18 expired. FRCP 15(a)(1). The court therefore STRIKES the amended complaint as  
19 improperly filed.

20 However, plaintiffs' attempt to amend the complaint may suggest that plaintiffs are  
21 aware of certain deficiencies in the original complaint. Accordingly, plaintiffs may file a  
22 motion for leave to amend the complaint, or may enter into a stipulation with defendants  
23 that plaintiffs can amend the complaint. As the original complaint remains the operative  
24 complaint, defendants' motion to dismiss remain on calendar for hearing on July 27, 2011.

25 If plaintiffs move to amend the complaint before defendants' motion is heard, then  
26 the court would find it in the interest of judicial economy to first address the grounds for  
27 amendment, which may obviate the need to decide defendants' motion. The parties

1 shall meet and confer within ten days and attempt to agree on an approach that will  
2 streamline this process.

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4 **IT IS SO ORDERED.**

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6 Dated: June 22, 2011

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PHYLLIS J. HAMILTON  
United States District Judge